

App. No. 10/759,858

Request for reconsideration under 37 CFR §1.111

REMARKS

Claims 21-24, 34-43, 64-67, and 77-119 are pending and under consideration. Claims 21, 34, 40, 64, 77, 83, 99, 100, 116, and 118 are independent claims. Reconsideration of the application is hereby respectfully requested.

Statement of Common Ownership

Applicants respectfully submit that the subject matter disclosed by Blauvelt et al (US 2004/0037342 A1) and the subject matter disclosed or claimed in the present application were, at the time the presently claimed invention was made, each subject to an obligation of assignment to Xponent Photonics Inc.

Rejection under 35 USC § 103

Claims 21-24, 34, 35, 37, 39, 64-67, 77, 78, 80, 82, 87, 88, 90-92, 94, 101, 102, 104-107, 109, and 110 are rejected under 35 USC § 103 as being unpatentable over Hara et al (JP 62-269907) in view of Blauvelt et al (US 2004/0037342 A1).

The rejection is overcome, since the subject matter disclosed by Blauvelt et al and the subject matter claimed in the present application were at the time of the invention each under an obligation of assignment to the same entity, and since Blauvelt et al qualifies as prior art only under 35 USC §102(e). Under the provisions of 35 USC §103(c)(1) Blauvelt et al cannot be used to preclude patentability under 35 U.S.C. §103 [MPEP §§ 2146 and 706.02(I)]. Applicants respectfully request withdrawal of the rejection.

Allowable Subject Matter

Applicants acknowledge allowance of Claims 40-43, 83-86, 95-100, and 111-119.

Claims 36, 38, 79, 81, 89, 93, 103, and 108 are objected to as being dependent upon a rejected base claim, but are deemed allowable if rewritten in independent form. Since the rejected base claims are now believed allowable, Applicants respectfully request withdrawal of the objection.

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Conclusion

In view of the above, it is respectfully submitted that Claims 21-24, 34-43, 64-67, and 77-119 are in condition for allowance. Reconsideration of the rejections and objections is respectfully requested. Allowance of Claims 21-24, 34-43, 64-67, and 77-119 at an early date is earnestly solicited.

Respectfully submitted,

/David S Alavi/

David S. Alavi
3762 West 11th Ave.
#408
Eugene, OR 97402

Reg. No. 40,310
541-686-9462 voice
800-853-6150 fax
dalavi@northwestpatent.com

Faxed to 571-273-8300 on 09/06/2005

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